

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 553

Introduced by Assembly Member Daly

February 23, 2015

An act to amend Sections 1215, 1215.1, 1215.2, 1215.5, 1215.6, and 1215.8 of, to add Section 1215.75 to, and to add Article 10.8 (commencing with Section 936.1) to Chapter 1 of Part 2 of Division 1 of, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 553, as amended, Daly. Insurance: corporate governance: insurance holding companies.

(1) Existing law regulates the business of insurance, including, but not limited to, requiring that each domestic, foreign, and alien insurer doing business in this state annually, on or before the first day of March of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with any additional filings as prescribed by the Insurance Commissioner for the preceding year.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.

This bill would encourage an insurer or insurance group of which the insurer is a member, to, no later than June 1 of each calendar year,

submit to the commissioner a Corporate Governance Annual Disclosure (CGAD) that contains specified information relating to corporate governance structure, policies, and practices. The bill would provide, with exceptions, that the documents, materials, or other information in the possession or control of the Department of Insurance that are obtained by, created by, or disclosed to the commissioner or any other person pursuant to these provisions are confidential and privileged, are not subject to disclosure *by the commissioner* pursuant to the California Public Records Act, ~~and are not subject to subpoena or subpoena, and are not subject to discovery from the commissioner or admissible in evidence in a~~ any civil action if obtained from the commissioner, as specified. The bill would make related findings on the confidentiality of these records. The bill would provide that an insurer who fails, without just cause, to timely file the CGAD as required by these provisions would be subject to specified late filing fees.

(2) The Insurance Holding Company System Regulatory Act, requires each insurer that is authorized to do business in this state and that is a member of an insurance holding company system to register with the commissioner and to file a registration statement containing specified information, including the capital structure and general financial condition of the insurer and specified transactions between the insurer and its affiliates.

The act prohibits a person from making a tender offer for, or a request or invitation for tenders of, or from entering into an agreement to exchange securities for or acquire in the open market, any voting security, or any security convertible into a voting security, of a domestic insurer or of any other person controlling a domestic insurer, if the other person is not substantially engaged in any businesses other than insurance, if that would result in the person acquiring control of the insurer. Existing law also prohibits a person from entering into an agreement to merge with or otherwise acquire control of a domestic insurer. These prohibitions do not apply if, at the time copies of the offer, purchase, request, or invitation are first published, sent, or given to security holders or the agreement or transaction is entered into, the person has filed with the commissioner, and has sent to the insurer, a statement containing specified information and any additional information the commissioner prescribes in the public interest or to protect policyholders or shareholders.

Under the act, a domestic insurer or commercially domiciled insurer, and a person in its insurance holding company system, may only enter

into specified affiliate transactions, including reinsurance or pooling agreements, if the insurer has notified the commissioner in writing of its intent to enter into the transaction with at least 30 days' notice, or a shorter period that the commissioner allows, and the commissioner has not disapproved the transaction within that period.

The act provides that any insurer or any director, officer, employee, or agent of the insurer that commits a willful violation of the act is subject to criminal proceedings.

This bill would require the tender offer or merger statement and the notification of proposed affiliate transaction filed with the commissioner to be submitted on a form and in a format prescribed by the National Association of Insurance Commissioners.

Because a willful violation of this provision would be subject to criminal proceedings, the bill would create a state-mandated local program.

This bill would authorize the commissioner to act as groupwide supervisor, as defined, for any internationally active insurance group, as defined, or, alternatively, authorize the commissioner to acknowledge another regulatory official as the groupwide supervisor if the internationally active insurance group meets any specified condition pertaining to its insurance operations in the state. The bill would also authorize the commissioner, as the groupwide supervisor, to engage in specified supervision activities, including, but not limited to: (A) assessing the enterprise risks within the internationally active insurance group; (B) requesting relevant information from any member of that group; and (C) coordinating and compelling development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to its member. The bill would also make technical, nonsubstantive, and conforming changes.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This~~

(5) *This* bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 10.8 (commencing with Section 936.1) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 10.8. Corporate Governance Disclosure Act

936.1. (a) The purpose of this article is to provide the Insurance Commissioner a summary of an insurer or insurance group's corporate governance structure, policies, and practices to permit the commissioner to gain and maintain an understanding of the insurer's corporate governance framework and outline the requirements for completing a corporate governance annual disclosure with the Insurance Commissioner. The requirements of this article shall apply to all insurers domiciled in this state.

(b) The Legislature finds and declares that the Corporate Governance Annual Disclosure and related information will contain confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade secret information that, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(c) This article shall not be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law. Notwithstanding the foregoing, this article shall not be construed to limit the commissioner's authority or the rights or obligations of third parties, under Article 4 (commencing with Section 729) relating to the examination of insurers.

936.2. For the purposes of this article, the following definitions apply:

1 (a) “Corporate Governance Annual Disclosure (CGAD)” means
2 a confidential report filed by the insurer or insurance group made
3 in accordance with the requirements of this article.

4 (b) “Insurance group” means those insurers and affiliates
5 included within an insurance holding company system as defined
6 in subdivision (e) of Section 1215 (Insurance Holding Company
7 System Regulatory Act).

8 (c) “Insurer” has the same meaning as set forth in subdivision
9 (f) of Section 1215, except that it shall not include agencies,
10 authorities, or instrumentalities of the United States, its possessions
11 and territories, the Commonwealth of Puerto Rico, the District of
12 Columbia, or a state or political subdivision of a state.

13 (d) An “ORSA Summary Report” means the report filed in
14 accordance with subdivision (e) of Section 935.2.

15 (e) “Corporate Governance Annual Disclosure Model
16 Regulation” means the current version of the Corporate Governance
17 Annual Disclosure Model Regulation developed and adopted by
18 the National Association of Insurance Commissioners (NAIC) and
19 as amended from time to time. A change in the Corporate
20 Governance Annual Disclosure Model Regulations shall be
21 effective on the January 1 following the calendar year in which
22 the changes have been adopted by the NAIC.

23 936.3. (a) An insurer, or the insurance group of which the
24 insurer is a member, shall, no later than June 1 of each calendar
25 year, submit to the commissioner a CGAD that contains the
26 information described in subdivision (b) of Section 936.5.
27 Notwithstanding any request from the commissioner made pursuant
28 to subdivision (c), if the insurer is a member of an insurance group,
29 the insurer shall submit the report required by this section to the
30 commissioner of the lead state for the insurance group, in
31 accordance with the laws of the lead state, as determined by the
32 procedures outlined in the most recent Financial Analysis
33 Handbook adopted by the NAIC.

34 (b) The CGAD shall include a signature of the insurer or
35 insurance group’s chief executive officer or corporate secretary
36 attesting to the best of that individual’s belief and knowledge that
37 the insurer has implemented the corporate governance practices
38 therein and that a copy of the disclosure has been provided to the
39 insurer’s board of directors or the appropriate committee thereof.

1 (c) An insurer not required to submit a CGAD under this section
2 shall submit a CGAD upon the commissioner's request.

3 (d) (1) For purposes of completing the CGAD, the insurer or
4 insurance group may provide information regarding corporate
5 governance at one or all of the following: the ultimate controlling
6 parent level, an intermediate holding company level, or the
7 individual legal entity level, depending upon how the insurer or
8 insurance group has structured its system of corporate governance.

9 (2) The insurer or insurance group is encouraged to make the
10 CGAD disclosures at one of the following levels:

11 (A) At the level at which the insurer's or insurance group's risk
12 appetite is determined.

13 (B) At the level at which the earnings, capital, liquidity,
14 operations, and reputation of the insurer are overseen collectively
15 and at which the supervision of those factors are coordinated and
16 exercised.

17 (C) At the level at which legal liability for failure of general
18 corporate governance duties would be placed.

19 (3) If the insurer or insurance group determines the level of
20 reporting based on the criteria listed in paragraph (2), it shall
21 indicate which of the three criteria was used to determine the level
22 of reporting and explain any subsequent changes in the level of
23 reporting.

24 (e) The review of the CGAD and any additional requests for
25 information shall be made through the lead state as determined by
26 the procedures within the most recent Financial Analysis Handbook
27 referenced in subdivision (a).

28 (f) Insurers providing information substantially similar to the
29 information required by this article in other documents provided
30 to the commissioner, including proxy statements filed in
31 conjunction with Form B requirements, or other state or federal
32 filings provided to the department, shall not be required to duplicate
33 that information in the CGAD but shall only be required to cross
34 reference the document in which the information is included.

35 936.4. The commissioner may, upon notice and opportunity
36 for all interested parties to be heard, issue those rules, regulations,
37 and orders as may be necessary to carry out the provisions of this
38 article. Those rules and regulations shall be adopted, amended, or
39 repealed in accordance with Administrative Procedure Act Chapter

1 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
2 Title 2 of the Government Code.

3 936.5. (a) The insurer or insurance group shall have discretion
4 over the responses to the CGAD inquiries, provided the CGAD
5 contains the material information necessary to permit the
6 commissioner to gain an understanding of the insurer's or group's
7 corporate governance structure, policies, and practices. The
8 commissioner may request additional information that he or she
9 deems material and necessary to provide him or her with a clear
10 understanding of the corporate governance policies, the reporting
11 or information system, or controls implementing those policies.

12 (b) Notwithstanding subdivision (a), the insurer or insurer group
13 shall prepare the CGAD consistent with the NAIC Corporate
14 Governance Annual Disclosure Model Regulation, subject to the
15 requirements of this article. Documentation and supporting
16 information shall be maintained and made available upon
17 examination or upon request of the commissioner.

18 936.6. (a) (1) Documents, materials, or other information,
19 including the CGAD, in the possession or control of the department
20 that are obtained by, created by, or disclosed to, the commissioner
21 or any other person under this article are recognized by this state
22 as being proprietary and to contain trade secrets. All those
23 documents, materials, or other information shall be confidential
24 by law and privileged, shall not be subject to disclosure *by the*
25 *commissioner* pursuant to the California Public Records Act
26 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
27 Title 1 of the Government Code), shall not be subject to subpoena,
28 and shall not be subject to discovery *from the commissioner* or
29 admissible in evidence in any private civil action if obtained from
30 the commissioner in any manner.

31 (2) However, the commissioner is authorized to use the
32 documents, materials, or other information in the furtherance of
33 any regulatory or legal action brought as a part of the
34 commissioner's official duties. The commissioner shall not
35 otherwise disclose or make public the documents, materials, or
36 other information without the prior written consent of the insurer.

37 (3) This section shall not be construed to require written consent
38 of the insurer before the commissioner may share or receive
39 confidential documents, materials, or other CGAD-related

1 information pursuant to subdivision (c) to assist in the performance
2 of the commissioner's regulatory duties.

3 (b) Neither the commissioner nor any person who received
4 documents, materials, or other CGAD-related information, through
5 examination or otherwise, while acting under the authority of the
6 commissioner, or with whom those documents, materials, or other
7 information are shared pursuant to this article shall be permitted
8 or required to testify in any private civil action concerning any
9 confidential documents, materials, or information described in
10 subdivision (a).

11 (c) In order to assist in the performance of the commissioner's
12 regulatory duties, the commissioner may do both of the following:

13 (1) Upon request, share documents, materials, or other
14 CGAD-related information, including the confidential and
15 privileged documents, materials, or information described in
16 subdivision (a), including proprietary and trade secret documents
17 and materials with other state, federal, and international financial
18 regulatory agencies, including members of any supervisory college
19 as defined in Section 1215.7 (Insurance Holding Company System
20 Regulatory Act), with the NAIC, and with third-party consultants
21 pursuant to Section 936.7, provided that the recipient agrees in
22 writing to maintain the confidentiality and privileged status of the
23 CGAD-related documents, materials, or other information and has
24 verified in writing the legal authority to maintain confidentiality.

25 (2) Receive documents, materials, or other CGAD-related
26 information, including otherwise confidential and privileged
27 documents, materials, or information, including proprietary and
28 trade-secret information or documents, from regulatory officials
29 of other state, federal, and international financial regulatory
30 agencies, including members of any supervisory college as defined
31 in Section 1215.7 (Insurance Holding Company System Regulatory
32 Act), and from the NAIC, and shall maintain as confidential or
33 privileged any documents, materials, or information received with
34 notice or the understanding that it is confidential or privileged
35 under the laws of the jurisdiction that is the source of the
36 documents, materials, or information.

37 (d) The sharing of information and documents by the
38 commissioner pursuant to this article shall not constitute a
39 delegation of regulatory authority or rulemaking, and the

1 commissioner is solely responsible for the administration,
2 execution, and enforcement of this article.

3 (e) No waiver of any applicable privilege or claim of
4 confidentiality in the documents, proprietary and trade-secret
5 materials, or other CGAD-related information shall occur as a
6 result of disclosure of that CGAD-related information or those
7 documents to the commissioner under this section or as a result of
8 sharing as authorized in this article.

9 936.7. (a) The commissioner may retain, at the insurer's
10 expense, third-party consultants, including attorneys, actuaries,
11 accountants, and other experts not otherwise a part of the
12 commissioner's staff as may be reasonably necessary to assist the
13 commissioner in reviewing the CGAD and related information or
14 the insurer's compliance with this article.

15 (b) Any person retained under subdivision (a) shall be under
16 the direction and control of the commissioner and shall act in a
17 purely advisory capacity.

18 (c) The NAIC and third-party consultants shall be subject to the
19 same confidentiality standards and requirements as the
20 commissioner.

21 (d) As part of the retention process, a third-party consultant
22 shall verify to the commissioner in writing, with notice to the
23 insurer, that it is free of a conflict of interest, and that it has internal
24 procedures in place to monitor compliance with a conflict and to
25 comply with the confidentiality standards and requirements of this
26 article.

27 (e) A written agreement with the NAIC, a third-party consultant,
28 or both, governing sharing and use of information provided
29 pursuant to this article shall contain all of the following provisions
30 and expressly require the written consent of the insurer prior to
31 making public information provided under this article:

32 (1) Specific procedures and protocols for maintaining the
33 confidentiality and security of CGAD-related information shared
34 with the NAIC or a third-party consultant pursuant to this article.

35 (2) Procedures and protocols for sharing by the NAIC only with
36 other state regulators from states in which the insurance group has
37 domiciled insurers. The agreement shall provide that the recipient
38 agrees in writing to maintain the confidentiality and privileged
39 status of the CGAD-related documents, materials, or other

1 information and has verified in writing the legal authority to
2 maintain confidentiality.

3 (3) A provision specifying that ownership of the CGAD-related
4 information shared with the NAIC or a third-party consultant
5 remains with the department, and the NAIC's or third-party
6 consultant's use of the information is subject to the direction of
7 the commissioner.

8 (4) A provision that prohibits the NAIC or a third-party
9 consultant from storing the information shared pursuant to this act
10 in a permanent database after the underlying analysis is completed.

11 (5) A provision requiring the NAIC or third-party consultant to
12 provide prompt notice to the commissioner and to the insurer or
13 insurance group regarding any subpoena, request for disclosure,
14 or request for production of the insurer's CGAD-related
15 information.

16 (6) A requirement that the NAIC or a third-party consultant
17 consent to intervention by an insurer in any judicial or
18 administrative action in which the NAIC or a third-party consultant
19 may be required to disclose confidential information about the
20 insurer shared with the NAIC or a third-party consultant pursuant
21 to this article.

22 936.8. Any insurer or insurer group failing, without just cause,
23 to timely file the CGAD as required in this article shall be subject
24 to the late filing fees set forth in Section 924. The commissioner
25 may reduce the penalty if the insurer or insurer group demonstrates
26 to the commissioner that the imposition of the penalty would
27 constitute a financial hardship to the insurer or insurer group.

28 936.9. The provisions of this article, other than Section 936.6,
29 are severable. If any provision of this article, other than Section
30 936.6, or its application is held invalid, that invalidity shall not
31 affect other provisions or applications that can be given effect
32 without the invalid provision or application.

33 SEC. 2. Section 1215 of the Insurance Code is amended to
34 read:

35 1215. As used in this article, the following terms shall have
36 the respective meanings hereafter set forth, unless the context shall
37 otherwise require:

38 (a) An "affiliate" of, or person "affiliated" with, a specific
39 person, is a person that directly, or indirectly, through one or more

1 intermediaries, controls, or is controlled by, or is under common
2 control with, the person specified.

3 (b) “Business day” is any day other than Saturday, Sunday, and
4 any other day that is specified or provided for as a holiday in the
5 Government Code.

6 (c) The term “control” includes the terms “controlling,”
7 “controlled by,” and “under common control with,” and means
8 the possession, direct or indirect, of the power to direct or cause
9 the direction of the management and policies of a person, whether
10 through the ownership of voting securities, by contract other than
11 a commercial contract for goods or nonmanagement services, or
12 otherwise, unless the power is the result of an official position with
13 or corporate office held by the person. Control shall be presumed
14 to exist if any person, directly or indirectly, owns, controls, holds
15 with the power to vote, or holds proxies representing, more than
16 10 percent of the voting securities of any other person. This
17 presumption may be rebutted by a showing that control does not
18 exist in fact pursuant to the filing of a disclaimer of affiliation in
19 accordance with subdivision (l) of Section 1215.4. The
20 commissioner may, after furnishing all persons in interest notice
21 and opportunity to be heard, determine that control exists in fact,
22 notwithstanding the absence of a presumption to that effect.

23 (d) “Enterprise risk” means any activity, circumstance, or event
24 or series of events involving one or more affiliates of an insurer
25 that, if not remedied promptly, is likely to have a material adverse
26 effect upon the financial condition or liquidity of the insurer or its
27 insurance holding company system as a whole, including, but not
28 limited to, anything that would cause the insurer’s risk-based
29 capital to fall into company action level as set forth in Article 4.1
30 (commencing with Section 739) of Chapter 1 and under Section
31 739.5 or would cause the insurer to be in hazardous financial
32 condition and allow the commissioner to take actions that are
33 necessary under Article 14 (commencing with Section 1010),
34 Article 14.3 (commencing with Section 1064.1), and Article 15.5
35 (commencing with Section 1077).

36 (e) An “insurance holding company system” consists of two or
37 more affiliated persons, one or more of which is an insurer.

38 (f) “Insurer” shall have the same meaning as set forth in Section
39 826, excluding subdivisions (e) and (f) of that section.

(g) “Person” is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or any similar entity, or any combination thereof acting in concert.

(h) A “security holder” of a specified person is the holder that owns any security of that person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(i) A “subsidiary” of a specified person is an affiliate controlled by that person directly, or indirectly through one or more intermediaries.

(j) “Voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

(k) “Commissioner” means the Insurance Commissioner of the state and any assistant to the Insurance Commissioner designated and authorized by the commissioner while acting under his or her designation as the Insurance Commissioner.

(l) “Groupwide supervisor” means the insurance official authorized to engage in conducting and coordinating groupwide supervision activities who is determined or acknowledged by the commissioner pursuant to subdivision (a) of Section 1215.75 to have sufficient significant contacts with the internationally active insurance group.

(m) “Internationally active insurance group” means an insurance holding company system that includes an insurer registered pursuant to Section 1215.4 and that meets the following criteria:

(1) Insurers that are part of the insurance holding company system write premiums in at least three countries.

(2) The percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company system’s total gross written premiums.

(3) Based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars (\$50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars (\$10,000,000,000).

(n) “NAIC” means the National Association of Insurance Commissioners.

SEC. 3. Section 1215.1 of the Insurance Code is amended to read:

1 1215.1. (a) Any domestic insurer, either by itself or in
2 cooperation with one or more persons, may organize or acquire
3 one or more subsidiaries subject to the limitations of this section.

4 (b) In addition to investments in common stock, preferred stock,
5 debt obligations, and other securities permitted under all other
6 sections of this chapter, a domestic insurer may also do one or
7 more of the following:

8 (1) Invest in common stock, preferred stock, debt obligations,
9 and other securities of one or more subsidiaries, amounts that do
10 not exceed the lesser of 10 percent of the insurer's assets or 50
11 percent of the insurer's surplus as regards policyholders. However,
12 after these investments, the insurer's surplus as regards
13 policyholders shall be reasonable in relation to the insurer's
14 outstanding liabilities and adequate to its financial needs. In
15 calculating the amount of these investments, there shall be excluded
16 investments in insurance subsidiaries, and there shall be included
17 (A) total net moneys or other consideration expended and
18 obligations assumed in the acquisition or formation of a subsidiary,
19 including all organizational expenses and contributions to capital
20 and surplus of the subsidiary whether or not represented by the
21 purchase of capital stock or issuance of other securities, and (B)
22 all amounts expended in acquiring additional common stock,
23 preferred stock, debt obligations, and other securities and all
24 contributions to the capital or surplus of a subsidiary subsequent
25 to its acquisition or formation.

26 "Insurance subsidiary" is an insurer that is organized within the
27 United States and is controlled, directly or indirectly, by a reporting
28 insurer subject to this article. For purposes of this paragraph,
29 "investments in insurance subsidiaries" shall include the following:

30 (A) Any direct investment in an insurance subsidiary.

31 (B) The insurer's proportionate share of any investment in an
32 insurance subsidiary held by any subsidiary of the insurer. This
33 shall be calculated by multiplying the amount of the subsidiary's
34 investment in the insurance subsidiary by the insurer's percentage
35 of ownership of the subsidiary.

36 (2) Invest any amount in common stock, preferred stock, debt
37 obligations, and other securities of one or more subsidiaries,
38 provided that each subsidiary agrees to limit its investments in any
39 asset so that these investments will not cause the amount of the
40 total investment of the insurer to exceed any of the investment

1 limitations specified in paragraph (1) or in this chapter applicable
2 to the insurer. For the purpose of this paragraph, “the total
3 investment of the insurer” shall include (A) any direct investment
4 by the insurer in an asset, and (B) the insurer’s proportionate share
5 of any investment of an asset by any subsidiary of the insurer,
6 which shall be calculated by multiplying the amount of the
7 subsidiary’s investment by the percentage of the insurer’s
8 ownership of that subsidiary.

9 (3) With the approval of the commissioner, invest any amount
10 in common stock, preferred stock, debt obligations, or other
11 securities of one or more subsidiaries, provided that after this
12 investment the insurer’s surplus as regards policyholders shall be
13 reasonable in relation to the insurer’s outstanding liabilities and
14 adequate to its financial needs.

15 (c) Investments in common stock, preferred stock, debt
16 obligations, or other securities of subsidiaries made pursuant to
17 subdivision (b) shall neither limit nor be subject to any of the
18 otherwise applicable authorizations, restrictions, or prohibitions
19 contained in this article applicable to these investments of insurers.

20 (d) Whether any investment pursuant to subdivision (b) meets
21 the applicable requirements thereof is to be determined immediately
22 after the investment is made, taking into account the then
23 outstanding principal balance on all previous investments in debt
24 obligations, and the value of all previous investments in equity
25 securities as of the date they were made.

26 (e) If an insurer ceases to control a subsidiary, it shall dispose
27 of any investment therein made pursuant to this section within
28 three years from the time of the cessation of control, or within any
29 further time as the commissioner may prescribe, unless at any time
30 after the investment has been made, the investment has met the
31 requirements for investment under any other section of this part.

32 SEC. 4. Section 1215.2 of the Insurance Code is amended to
33 read:

34 1215.2. (a) No person shall make a tender offer for, or a request
35 or invitation for tenders of, or enter into an agreement to exchange
36 securities for or acquire in the open market, any voting security,
37 or any security convertible into a voting security, of a domestic
38 insurer or of any other person controlling a domestic insurer, if
39 the other person is not substantially engaged either directly or
40 through its affiliates in any businesses other than that of insurance,

1 if, as a result of the consummation thereof, the person would,
2 directly or indirectly, acquire control of the insurer, and no person
3 shall enter into an agreement to merge with or otherwise to acquire
4 control of a domestic insurer, unless, at the time copies of the offer,
5 purchase, request, or invitation are first published, sent, or given
6 to security holders or the agreement or transaction is entered into,
7 as the case may be, the person has filed with the commissioner,
8 and has sent to the insurer, a statement containing the following
9 information, and any additional information as the commissioner
10 may by rule or regulation prescribe as necessary or appropriate in
11 the public interest or for the protection of policyholders or
12 shareholders:

13 (1) The background and identity of all persons by whom or on
14 whose behalf the purchases or the exchange, merger, or other
15 acquisition of control are to be effected.

16 (2) The source and amount of the funds or other consideration
17 used or to be used in making the purchases or in effecting the
18 exchange, merger, or other acquisition of control, and, if any part
19 of the funds or other consideration has been or is to be borrowed
20 or otherwise obtained for the purpose of making the purchases or
21 effecting the exchange, merger, or other acquisition of control, a
22 description of the transaction and the names of the parties thereto.
23 However, where a source of funds is a loan made in the lender's
24 ordinary course of business, if the person filing the statement so
25 requests, the name of the lender shall not be made available to the
26 public.

27 (3) Any plans or proposals that those persons may have to
28 liquidate the insurer, to sell its assets or merge it with any person,
29 or to make any other major change in its business or corporate
30 structure or management.

31 (4) The amount of each class of voting securities or securities
32 which may be converted into voting securities of the insurer or the
33 controlling person which are beneficially owned, and the amount
34 of each class of voting securities or securities which may be
35 converted into voting securities of the insurer or the controlling
36 person concerning which there is a right to acquire beneficial
37 ownership, by each person and by each affiliate of each person,
38 together with the name and address of each affiliate.

39 (5) Information as to any contracts, arrangements, or
40 understandings with any person with respect to any securities of

1 the insurer or the controlling person, including, but not limited to,
2 transfer of any of the securities, joint ventures, loan or option
3 arrangements, puts or calls, guarantees of loans, guarantees against
4 loss or guarantees of profits, division of losses or profits, or the
5 giving or withholding of proxies, naming the persons with whom
6 the contracts, arrangements, or understandings have been entered
7 into, and giving the details thereof.

8 All requests or invitations for tenders or advertisements making
9 a tender offer or requesting or inviting tenders of the voting
10 securities of the insurer or the controlling person made by or on
11 behalf of the person, and a copy of the agreement to exchange or
12 otherwise acquire securities or to merge with or otherwise to
13 acquire control of the insurer, shall be filed with the commissioner
14 and sent to the insurer as a part of the statement and shall contain
15 the information contained in the statement as the commissioner
16 may by rule or regulation prescribe. Copies of any additional
17 material soliciting or requesting the tender offers subsequent to
18 the initial solicitation or request, and copies of any amendment to
19 the agreement, shall contain the information as the commissioner
20 may by rule or regulation prescribe as necessary or appropriate in
21 the public interest or for the protection of policyholders or
22 shareholders, and shall be filed with the commissioner and sent to
23 the insurer not later than the time copies of the material are first
24 published or sent or given to security holders or the amendment
25 is entered into.

26 (b) If the person required to file the statement referred to in
27 subdivision (a) is a partnership, limited partnership, syndicate, or
28 other group, the commissioner may require that the information
29 called for by paragraphs (1) to (5), inclusive, of subdivision (a)
30 shall be given with respect to: (1) each partner of the partnership
31 or limited partnership, (2) each member of the syndicate or group,
32 and (3) each person who controls the partner or member. If a
33 person referred to in paragraph (1), (2), or (3) of this subdivision
34 is a corporation or the person required to file the statement referred
35 to in subdivision (a) is a corporation, the commissioner may require
36 that the information called for by paragraphs (1) to (5), inclusive,
37 of subdivision (a) shall be given with respect to the corporation
38 and each officer and director of the corporation and each person
39 who is directly or indirectly the beneficial owner of more than 10
40 percent of the outstanding voting securities of the corporation.

1 (c) If any tender offer, request, or invitation for tenders, or
2 agreement to exchange or otherwise acquire securities or to merge
3 or otherwise acquire control referred to in subdivision (a), is
4 proposed to be made by means of a registration statement under
5 the federal Securities Act of 1933, or in circumstances requiring
6 the disclosure of similar information under the federal Securities
7 Exchange Act of 1934, or under a state law requiring similar
8 registration or disclosure, the person required to file the statement
9 referred to in subdivision (a) may file that registration statement
10 with the commissioner as full satisfaction of the requirement in
11 subdivision (a).

12 (d) The purchases, exchanges, mergers, or other acquisitions of
13 control referred to in subdivision (a) may not be made until the
14 commissioner approves the purchases, exchanges, mergers, or
15 other acquisitions of control. The commissioner shall approve or
16 disapprove the transaction on or before the latter of 60 days after
17 the statement required by subdivision (a) has been filed with the
18 commissioner or, if a hearing is held pursuant to subdivision (f),
19 30 days after the close of the hearing held pursuant to subdivision
20 (f). The commissioner may disapprove the transaction if the
21 commissioner finds any of the following:

22 (1) After the change of control the domestic insurer referred to
23 in subdivision (a) could not satisfy the requirements for the
24 issuance of a license to write the line or lines of insurance for
25 which it is presently licensed.

26 (2) The purchases, exchanges, mergers, or other acquisitions of
27 control would substantially lessen competition in insurance in this
28 state or create a monopoly therein.

29 (3) The financial condition of an acquiring person might
30 jeopardize the financial stability of the insurer, or prejudice the
31 interests of its policyholders.

32 (4) The plans or proposals which the acquiring person has to
33 liquidate the insurer, to sell its assets, or to merge it with any
34 person, or to make any other major change in its business or
35 corporate structure or management, are not fair and reasonable to
36 policyholders.

37 (5) The competence, experience, and integrity of those persons
38 who would control the operation of the insurer indicate that it
39 would not be in the interest of policyholders or the public to permit
40 them to do so.

1 (e) The commissioner shall require the payment of two thousand
2 three hundred sixty dollars (\$2,360) as a fee for filing an
3 application pursuant to this section, the amount to accompany the
4 application. The application shall be on a form and in a format
5 prescribed by the NAIC.

6 (f) (1) The commissioner may hold a public hearing after the
7 statement required by subdivision (a) is filed. If a hearing is held,
8 at least 20 days' notice shall be given by the commissioner to the
9 person filing the statement. Not less than seven days' notice of the
10 public hearing shall be given by the person filing the statement to
11 the insurer and to other persons as may be designated by the
12 commissioner. At the hearing, the person filing the statement, the
13 insurer, any person to whom notice of hearing was sent, and any
14 other person whose interest may be affected, shall have the right
15 to present evidence, examine and cross-examine witnesses, and
16 offer oral and written arguments, and in connection therewith shall
17 be entitled to conduct proceedings in the same manner as is
18 presently allowed under the Administrative Procedure Act (Chapter
19 5 (commencing with Section 11500) of Part 1 of Division 3 of
20 Title 2 of the Government Code). All discovery proceedings shall
21 be concluded not later than three days prior to the commencement
22 of the public hearing.

23 (2) If the proposed acquisition of control will require the
24 approval of more than one commissioner, the public hearing
25 referred to in paragraph (1) may be held on a consolidated basis
26 upon request of the person filing the statement referred to in
27 subdivision (a). The person shall file the statement referred to in
28 subdivision (a) with the National Association of Insurance
29 Commissioners (NAIC) within five days of making the request
30 for a public hearing. A commissioner may opt out of a consolidated
31 hearing, and shall provide notice to the applicant of the opt-out
32 within 10 days of the receipt of the statement referred to in
33 subdivision (a). A hearing conducted on a consolidated basis shall
34 be public and shall be held within the United States before the
35 commissioners of the states in which the insurers are domiciled.
36 The commissioners shall hear and receive evidence. Any
37 commissioner may attend the hearing, in person or by
38 telecommunication.

39 (g) This section shall not apply to any offer for or request or
40 invitation for tenders of any voting securities, or any agreement

1 to exchange securities for or otherwise acquire control, if the
2 insurer whose shares are to be acquired remains a direct or indirect
3 subsidiary of the same ultimate controlling company person within
4 the insurer's insurance holding company system, neither the
5 acquiring person nor any affiliate acquires or incurs any debt,
6 guarantee, or other liability related to the transaction, and no shares
7 are purchased by or sold to a person who is not an affiliated person
8 in that insurance holding company system, or if, and to the extent
9 that, the commissioner, by rule or regulation or by order, exempts
10 the offer, request, invitation, or agreement from the provisions of
11 this section as not comprehended within the purposes thereof.

12 (h) For purposes of this section, any controlling person of a
13 domestic insurer seeking to divest its controlling interest in the
14 domestic insurer, in any manner, shall file with the commissioner,
15 with a copy to the insurer, confidential notice of its proposed
16 divestiture at least 30 days prior to the cessation of control. The
17 commissioner shall determine those instances in which the party
18 or parties seeking to divest a controlling interest in an insurer shall
19 be required to file for and obtain approval of the transaction. The
20 information shall remain confidential until the conclusion of the
21 transaction unless the commissioner, in his or her discretion,
22 determines that confidential treatment will interfere with
23 enforcement of this article. If the statement referred to in
24 subdivision (a) of Section 1215.2 is otherwise filed, this subdivision
25 shall not apply.

26 SEC. 5. Section 1215.5 of the Insurance Code is amended to
27 read:

28 1215.5. (a) Transactions by registered insurers with their
29 affiliates are subject to the following standards:

- 30 (1) The terms shall be fair and reasonable.
31 (2) Charges or fees for services performed shall be reasonable.
32 (3) Expenses incurred and payment received shall be allocated
33 to the insurer in conformity with customary insurance accounting
34 practices consistently applied.
35 (4) The books, accounts, and records of each party to all
36 transactions shall be so maintained as to clearly and accurately
37 disclose the precise nature and details of the transactions, including
38 accounting information that is necessary to support the
39 reasonableness of the charges or fees to the parties.

1 (5) The insurer's policyholder's surplus following any dividends
2 or distributions to shareholder affiliates shall be reasonable in
3 relation to the insurer's outstanding liabilities and adequate to its
4 financial needs.

5 (b) The following transactions involving a domestic insurer or
6 commercially domiciled insurer, as defined in Section 1215.14,
7 and any person in its insurance holding company system, including
8 amendments or modifications of affiliate agreements previously
9 filed pursuant to this section, may be entered into only if the insurer
10 has notified the commissioner in writing of its intention to enter
11 into the transaction at least 30 days prior thereto, or a shorter period
12 as the commissioner may permit, and the commissioner has not
13 disapproved it within that period. The notice for amendments or
14 modifications shall include the reasons for the change and the
15 financial impact on the domestic insurer or commercially domiciled
16 insurer. Informal notice shall be reported, within 30 days after a
17 termination of a previously filed agreement, to the commissioner
18 for determination of the type of filing required, if any. The
19 commissioner shall require the payment of one thousand eight
20 hundred eighty-nine dollars (\$1,889) as a fee for filings pursuant
21 to this subdivision, and the filings shall be on a form and in a
22 format prescribed by the NAIC. The payment shall accompany
23 the filing.

24 (1) Sales, purchases, exchanges, loans, extensions of credit, or
25 investments, if the transactions are equal to or exceed:

26 (A) For a nonlife insurer, the lesser of 3 percent of the insurer's
27 admitted assets or 25 percent of the policyholder's surplus as of
28 the preceding December 31st.

29 (B) For a life insurer, 3 percent of the insurer's admitted assets
30 as of the preceding December 31st.

31 (2) Loans or extensions of credit to a person who is not an
32 affiliate, if made with the agreement or understanding that the
33 proceeds of the transactions, in whole or in substantial part, are to
34 be used to make loans or extensions of credit to, to purchase assets
35 of, or to make investments in, any affiliate of the insurer, if the
36 transactions are equal to or exceed:

37 (A) For a nonlife insurer, the lesser of 3 percent of the insurer's
38 admitted assets or 25 percent of the policyholder's surplus as of
39 the preceding December 31st.

1 (B) For a life insurer, 3 percent of the insurer's admitted assets
2 as of the preceding December 31st.

3 (3) Reinsurance agreements and pooling agreements and
4 modifications thereto in which the reinsurance premium or a
5 change in the insurer's liabilities, or the projected reinsurance
6 premium or a change in the insurer's liabilities in any of the next
7 three years, equals or exceeds 5 percent of the insurer's
8 policyholder's surplus, as of the preceding December 31st,
9 including those agreements that may require as consideration the
10 transfer of assets from an insurer to a nonaffiliate, if an agreement
11 or understanding exists between the insurer and nonaffiliate that
12 any portion of the assets will be transferred to one or more affiliates
13 of the insurer.

14 (4) All management agreements, service contracts, tax sharing
15 agreements, and cost-sharing arrangements. However, subscription
16 agreements or powers of attorney executed by subscribers of a
17 reciprocal or interinsurance exchange are not required to be
18 reported pursuant to this section if the form of the agreement was
19 in use before 1943 and was not amended in any way to modify
20 payments, fees, or waivers of fees or otherwise substantially
21 amended after 1943. Payment or waiver of fees or other amounts
22 due under subscription agreements or powers of attorney forms
23 that were in use before 1943 and that have not been amended in
24 any way to modify payments, fees, or waiver of fees, or otherwise
25 substantially amended after 1943 shall not be subject to regulation
26 pursuant to paragraph (2) of subdivision (a).

27 (5) Guarantees when initiated or made by a domestic or
28 commercially domiciled insurer, provided that a guarantee that is
29 quantifiable as to amount is not subject to the notice requirements
30 of this paragraph unless it exceeds the lesser of one-half of 1
31 percent of the insurer's admitted assets or 10 percent of surplus as
32 regards policyholders as of the 31st day of December next
33 preceding. Further, all guarantees that are not quantifiable as to
34 amount are subject to the notice requirements of this paragraph.

35 (6) Derivative transactions or series of derivative transactions.
36 The written filing to the commissioner shall include the type or
37 types of derivative transactions, the affiliate or affiliates engaging
38 with the insurer in the derivative transactions, the objective and
39 the rationale for the derivative transaction or series of derivative
40 transactions, the maximum maturity and economic effect of the

1 derivative transactions, and any other information required by the
2 commissioner. Derivative transactions entered into pursuant to
3 this subdivision shall comply with the provisions of Section 1211.

4 (7) Direct or indirect acquisitions or investments in a person
5 that controls the insurer or in an affiliate of the insurer in an amount
6 that, together with its present holdings in those investments,
7 exceeds 2.5 percent of the insurer's policyholder's surplus. Direct
8 or indirect acquisitions or investments in subsidiaries acquired
9 under Section 1215.1, or in nonsubsidiary insurance affiliates that
10 are subject to the provisions of this article, or in subsidiaries
11 acquired pursuant to Section 1199, are exempt from this
12 requirement.

13 (8) Any material transactions, specified by regulation, that the
14 commissioner determines may adversely affect the interests of the
15 insurer's policyholders.

16 (c) A domestic insurer may not enter into transactions that are
17 part of a plan or series of transactions with persons within the
18 holding company system if the purpose of those transactions is to
19 avoid the statutory threshold amount and thus avoid review. If the
20 commissioner determines that separate transactions were entered
21 into over any 12-month period to avoid review, the commissioner
22 may exercise his or her authority under Section 1215.11.

23 (d) The commissioner, in reviewing transactions under
24 subdivision (b), shall consider whether the transactions comply
25 with the standards set forth in subdivision (a) and whether they
26 may adversely affect the interests of policyholders.

27 (e) The commissioner shall be notified within 30 days of any
28 investment by the insurer in any one corporation if the total
29 investment in the corporation by the insurance holding company
30 system exceeds 10 percent of the corporation's voting securities.

31 (f) For purposes of this article, in determining whether an
32 insurer's policyholder's surplus is reasonable in relation to the
33 insurer's outstanding liabilities and adequate to its financial needs,
34 the following factors, among others, shall be considered:

35 (1) The size of the insurer, as measured by its assets, capital
36 and surplus, reserves, premium writings, insurance in force, and
37 other appropriate criteria.

38 (2) The extent to which the insurer's business is diversified
39 among the several lines of insurance.

40 (3) The number and size of risks insured in each line of business.

1 (4) The extent of the geographical dispersion of the insurer's
2 insured risks.

3 (5) The nature and extent of the insurer's reinsurance program.

4 (6) The quality, diversification, and liquidity of the insurer's
5 investment portfolio.

6 (7) The recent past and projected future trend in the size of the
7 insurer's investment portfolio.

8 (8) The recent past and projected future trend in the size of the
9 insurer's surplus, and the policyholder's surplus maintained by
10 other comparable insurers.

11 (9) The adequacy of the insurer's reserves.

12 (10) The quality and liquidity of investments in subsidiaries
13 made under Section 1215.1. The commissioner may treat those
14 investments as a disallowed asset for purposes of determining the
15 adequacy of the policyholder's surplus whenever, in his or her
16 judgment, the investment so warrants.

17 (11) The quality of the company's earnings and the extent to
18 which the reported earnings include extraordinary accounting
19 items.

20 (g) No insurer subject to registration under Section 1215.4 shall
21 pay any extraordinary dividend or make any other extraordinary
22 distribution to its stockholders until 30 days after the commissioner
23 has received notice of the declaration thereof and has approved
24 the payment or has not, within the 30-day period, disapproved the
25 payment.

26 For purposes of this section, an extraordinary dividend or
27 distribution is any dividend or distribution which, together with
28 other dividends or distributions made within the preceding 12
29 months, exceeds the greater of (1) 10 percent of the insurer's
30 policyholder's surplus as of the preceding December 31st, or (2)
31 the net gain from operations of the insurer, if the insurer is a life
32 insurer, or the net income, if the insurer is not a life insurer, for
33 the 12-month period ending the preceding December 31st.

34 Notwithstanding any other provision of law, an insurer may
35 declare an extraordinary dividend or distribution that is conditional
36 upon the commissioner's approval. The declaration confers no
37 rights upon stockholders until the commissioner has approved the
38 payment of the dividend or distribution or until the commissioner
39 has not disapproved the payment within the 30-day period referred
40 to in this subdivision.

(h) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject to by law, and the insurer shall be managed to ensure its separate operating identity consistent with the provisions of this article. However, nothing in this article shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subdivision (a).

(i) The provisions of this section do not apply to any insurer, information, or transaction exempted by the commissioner.

SEC. 6. Section 1215.6 of the Insurance Code is amended to read:

1215.6. (a) Subject to the limitation contained in this section, and in addition to the powers which the commissioner has under Article 4 (commencing with Section 730) of Chapter 1 of this part relating to the examination of insurers, the commissioner shall also have the power to examine any insurer registered under Section 1215.4 and its affiliates to ascertain the enterprise risk to which the insurer is subjected by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis. The commissioner may also order any insurer registered under Section 1215.4 to produce the records, books, or other information or papers in the possession of the insurer or its affiliates, including a report on the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis, as shall be necessary to ascertain the financial condition or legality of conduct of that insurer.

(b) The commissioner shall exercise his or her power under subdivision (a) only if the examination of the insurer under Article 4 (commencing with Section 730) of Chapter 1 of this part is inadequate or the interests of the policyholders of that insurer are being adversely affected.

(c) The commissioner may retain at the registered insurer's expense the attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be

1 reasonably necessary to assist in the conduct of the examination
2 under subdivision (a) of this section. Any persons so retained shall
3 be under the direction and control of the commissioner and shall
4 act in a purely advisory capacity.

5 (d) Each registered insurer producing for examination records,
6 books, and papers pursuant to subdivision (a) shall be liable for,
7 and shall pay the expense of, that examination in accordance with
8 Section 736.

9 SEC. 7. Section 1215.75 is added to the Insurance Code, to
10 read:

11 1215.75. (a) (1) The commissioner is authorized to act as the
12 groupwide supervisor for any internationally active insurance
13 group in accordance with this section. However, the commissioner
14 may otherwise acknowledge another regulatory official as the
15 groupwide supervisor when the internationally active insurance
16 group meets any of the following conditions:

17 (A) Does not have substantial insurance operations in the United
18 States.

19 (B) Has substantial insurance operations in the United States,
20 but not in this state.

21 (C) Has substantial insurance operations in the United States
22 and this state, but the commissioner has determined pursuant to
23 the factors set forth in subdivisions (b) and (f) that the other
24 regulatory official is the appropriate groupwide supervisor.

25 (2) An insurance holding company system that does not
26 otherwise qualify as an internationally active insurance group may
27 request that the commissioner make a determination or
28 acknowledgment as to a groupwide supervisor pursuant to this
29 section.

30 (b) In cooperation with other state, federal, and international
31 regulatory agencies, the commissioner shall identify a single
32 groupwide supervisor for an internationally active insurance group.
33 The commissioner may determine that he or she is the appropriate
34 groupwide supervisor for an internationally active insurance group
35 that conducts substantial insurance operations concentrated in the
36 state. However, the commissioner may acknowledge that a
37 regulatory official from another jurisdiction is the appropriate
38 groupwide supervisor for the internationally active insurance group.
39 The commissioner shall consider all of the following factors when

1 making a determination or acknowledgment pursuant to this
2 subdivision:

3 (1) The place of domicile of the insurers within the
4 internationally active insurance group that hold the largest share
5 of the group's written premiums, assets, or liabilities.

6 (2) The place of domicile of the top-tiered insurer or insurers
7 in the insurance holding company system of the internationally
8 active insurance group.

9 (3) The location of the executive offices or largest operational
10 offices of the internationally active insurance group.

11 (4) Whether another regulatory official is acting, or is seeking
12 to act, as the groupwide supervisor under a regulatory system that
13 the commissioner determines to be either of the following:

14 (A) Substantially similar to the system of regulation provided
15 under the laws of this state.

16 (B) Otherwise sufficient in terms of providing for groupwide
17 supervision, enterprise risk analysis, and cooperation with other
18 regulatory officials.

19 (5) Whether another regulatory official acting, or seeking to
20 act, as the groupwide supervisor provides the commissioner with
21 reasonably reciprocal recognition and cooperation.

22 However, a commissioner identified pursuant to this section as
23 the groupwide supervisor may determine that it is appropriate to
24 acknowledge another supervisor to serve as the groupwide
25 supervisor. The acknowledgment of the groupwide supervisor shall
26 be made after consideration of the factors listed in paragraphs (1)
27 to (5), inclusive, and shall be made in cooperation with and subject
28 to the acknowledgment of other regulatory officials involved with
29 supervision of members of the internationally active insurance
30 group, and in consultation with the internationally active insurance
31 group.

32 (c) Notwithstanding any other law, when another regulatory
33 official is acting as the groupwide supervisor of an internationally
34 active insurance group, the commissioner shall acknowledge that
35 regulatory official as the groupwide supervisor. However, if there
36 is a material change in the internationally active insurance group
37 that results in either (1) the internationally active insurance group's
38 insurers domiciled in this state holding the largest share of the
39 group's premiums, assets, or liabilities, or (2) this state being the
40 place of domicile of the top-tiered insurer or insurers in the

1 insurance holding company system of the internationally active
2 insurance group, the commissioner shall make a determination or
3 acknowledgment as to the appropriate groupwide supervisor for
4 that internationally active insurance group pursuant to subdivision
5 (b).

6 (d) Pursuant to Section 1215.6, the commissioner is authorized
7 to collect from any insurer registered pursuant to Section 1215.4
8 all information necessary to determine whether the commissioner
9 may act as the groupwide supervisor of an internationally active
10 insurance group or if the commissioner may acknowledge another
11 regulatory official to act as the groupwide supervisor. Prior to
12 issuing a determination that an internationally active insurance
13 group is subject to groupwide supervision by the commissioner,
14 the commissioner shall notify the insurer registered pursuant to
15 Section 1215.4 and the ultimate controlling person within the
16 internationally active insurance group. The internationally active
17 insurance group shall have not less than 30 days to provide the
18 commissioner with additional information pertinent to the pending
19 determination. The commissioner shall publish on the department's
20 Internet Web site the identity of internationally active insurance
21 groups that the commissioner has determined are subject to
22 groupwide supervision by the commissioner.

23 (e) If the commissioner is the groupwide supervisor for an
24 internationally active insurance group, the commissioner is
25 authorized to engage in any of the following groupwide supervision
26 activities:

27 (1) Assess the enterprise risks within the internationally active
28 insurance group to ensure both of the following:

29 (A) The material financial condition and liquidity risks to the
30 members of the internationally active insurance group that are
31 engaged in the business of insurance are identified by management.

32 (B) Reasonable and effective mitigation measures are in place.

33 (2) Request, from any member of an internationally active
34 insurance group subject to the commissioner's supervision,
35 information necessary and appropriate to assess enterprise risk,
36 including, but not limited to, information about the members of
37 the internationally active insurance group regarding any of the
38 following:

39 (A) Governance, risk assessment, and management.

40 (B) Capital adequacy.

1 (C) Material intercompany transactions.

2 (3) Coordinate and, through the authority of the regulatory
3 officials of the jurisdictions where members of the internationally
4 active insurance group are domiciled, compel development and
5 implementation of reasonable measures designed to ensure that
6 the internationally active insurance group is able to timely
7 recognize and mitigate enterprise risks to members of that
8 internationally active insurance group that are engaged in the
9 business of insurance.

10 (4) Communicate with other state, federal, and international
11 regulatory agencies for members within the internationally active
12 insurance group and share relevant information subject to the
13 confidentiality provisions of Section 1215.8, through supervisory
14 colleges as set forth in Section 1215.7 or otherwise.

15 (5) Enter into agreements with, or obtain documentation from,
16 any insurer registered pursuant to Section 1215.4, any member of
17 the internationally active insurance group, and any other state,
18 federal, and international regulatory agencies for members of the
19 internationally active insurance group, providing the basis for or
20 otherwise clarifying the commissioner's role as groupwide
21 supervisor, including provisions for resolving disputes with other
22 regulatory officials. These agreements or documentation shall not
23 serve as evidence in any proceeding that any insurer or person
24 within an insurance holding company system not domiciled or
25 incorporated in this state is doing business in this state or is
26 otherwise subject to jurisdiction in this state.

27 (6) Other groupwide supervision activities, consistent with the
28 authorities and purposes enumerated above, as considered
29 necessary by the commissioner.

30 (f) If the commissioner acknowledges that another regulatory
31 official from a jurisdiction that is not accredited by the NAIC is
32 the groupwide supervisor, the commissioner is authorized to
33 reasonably cooperate, through supervisory colleges or otherwise,
34 with groupwide supervision undertaken by the groupwide
35 supervisor if the following conditions are satisfied:

36 (1) The commissioner's cooperation is in compliance with the
37 laws of this state.

38 (2) The regulatory official acknowledged as the groupwide
39 supervisor also recognizes and cooperates with the commissioner's
40 activities as a groupwide supervisor for other internationally active

1 insurance groups when applicable. When that recognition and
2 cooperation is not reasonably reciprocal, the commissioner is
3 authorized to refuse recognition and cooperation.

4 (g) The commissioner is authorized to enter into agreements
5 with, or obtain documentation from, any insurer registered pursuant
6 to Section 1215.4, any affiliate of the insurer, and other state,
7 federal, or international regulatory agencies for members of the
8 internationally active insurance groups, that provide the basis for,
9 or otherwise clarify, a regulatory official's role as groupwide
10 supervisor.

11 (h) A registered insurer subject to this section shall be liable for
12 and shall pay the reasonable expenses of the commissioner's
13 participation in the administration of this section, including the
14 engagement of attorneys, actuaries, and any other professionals
15 and all reasonable travel expenses.

16 SEC. 8. Section 1215.8 of the Insurance Code is amended to
17 read:

18 1215.8. (a) All information, documents, and copies thereof
19 obtained by or disclosed to the commissioner or any other person
20 in the course of an examination or investigation made pursuant to
21 Section 1215.4, 1215.5, 1215.6, or 1215.75, and all information
22 reported or provided pursuant to Section 1215.4, 1215.5, 1215.6,
23 or 1215.75 shall be kept confidential, is not subject to disclosure
24 by the commissioner pursuant to the California Public Records
25 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
26 of Title 1 of the Government Code), is not subject to subpoena,
27 and is not subject to discovery from the commissioner or admissible
28 into evidence in any private civil action if obtained from the
29 commissioner in any manner. This information shall not be made
30 public by the commissioner or any other person except to insurance
31 departments of other states without the prior written consent of
32 the insurance company to which it pertains, unless the
33 commissioner, after giving the insurer and its affiliates who would
34 be affected thereby notice and opportunity to be heard, determines
35 that the interests of policyholders, shareholders, or the public will
36 be served by the publication thereof, in which event he or she may
37 publish all or any part thereof in a manner as he or she may deem
38 appropriate.

39 (b) In order to assist in the performance of the commissioner's
40 duties, the commissioner:

(1) May, upon request, be required to share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision (a), with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 1215.7; provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding paragraph (1), may only share confidential and privileged documents, materials, or information reported pursuant to subdivision (m) of Section 1215.4 with commissioners of states having statutes or regulations substantially similar to subdivision (a) and who have agreed in writing not to disclose the information.

(3) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

(4) May enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this subdivision consistent with this subdivision that shall do the following:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this subdivision, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators.

(B) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this subdivision remains with the commissioner and the NAIC's use of the information is subject to the direction of the commissioner.

1 (C) Require prompt notice to be given to an insurer whose
2 confidential information in the possession of the NAIC pursuant
3 to this subdivision is subject to a request or subpoena to the NAIC
4 for disclosure or production.

5 (D) Require the NAIC and its affiliates and subsidiaries to
6 consent to intervention by an insurer in any judicial or
7 administrative action in which the NAIC and its affiliates and
8 subsidiaries may be required to disclose confidential information
9 about the insurer shared with the NAIC and its affiliates and
10 subsidiaries pursuant to this subdivision.

11 (c) The sharing of information by the commissioner pursuant
12 to this subdivision shall not constitute a delegation of regulatory
13 authority or rulemaking, and the commissioner is solely responsible
14 for the administration, execution, and enforcement of the provisions
15 of this article.

16 (d) No waiver of any applicable privilege or claim of
17 confidentiality in the documents, materials, or information shall
18 occur as a result of disclosure to the commissioner under this
19 section or as a result of sharing as authorized in subdivision (c).

20 (e) Documents, materials, or other information filed in the
21 possession or control of the NAIC pursuant to this subdivision
22 shall be confidential by law and privileged, shall not be subject to
23 subpoena, and shall not be subject to discovery or admissible in
24 evidence in any private civil action.

25 SEC. 9. The Legislature finds and declares that Section 936.6
26 of the Insurance Code, as added by Section 1 of this act, imposes
27 a limitation on the public's right of access to the meetings of public
28 bodies or the writings of public officials and agencies within the
29 meaning of Section 3 of Article I of the California Constitution.
30 Pursuant to that constitutional provision, the Legislature makes
31 the following findings to demonstrate the interest protected by this
32 limitation and the need for protecting that interest:

33 (1) The Corporate Governance Annual Disclosure and related
34 information will contain confidential and sensitive information
35 related to an insurer or insurance group's internal operations and
36 proprietary and trade secret information that, if made public, could
37 potentially cause the insurer or insurance group competitive harm
38 or disadvantage.

39 (2) The interests in protecting the internal operations and
40 proprietary and trade secret information of the insurers or insurance

1 groups in order to promote consumer choice and competition in
2 the marketplace strongly outweighs the public interest in having
3 access to this information, and there are other means of obtaining
4 financial information, such as annual reports.

5 SEC. 10. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

14 SEC. 11. This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety within
16 the meaning of Article IV of the Constitution and shall go into
17 immediate effect. The facts constituting the necessity are:

18 (1) In order to permit insurers and insurance groups adequate
19 time to prepare their first Corporate Governance Annual Disclosure
20 (CGAD) that would be required, pursuant to the Corporate
21 Governance Disclosure Model Act, to be submitted to the Insurance
22 Commissioner no later than June 1, 2016, it is necessary for this
23 act to take effect immediately.

24 (2) In order to permit California's United States-based insurance
25 groups to receive, as quickly as possible, the benefits of the
26 Insurance Commissioner acting in the capacity of groupwide
27 supervisor under the amendments to the Insurance Holding
28 Company System Regulatory Act, it is necessary for this act take
29 effect immediately.